



Reprinted
February 15, 2001

HOUSE BILL No. 1477

DIGEST OF HB 1477 (Updated February 14, 2001 4:36 PM - DI 96)

Citations Affected: IC 22-5; IC 34-30.

Synopsis: Blacklisting and prohibited acts by employers. Recodifies the law concerning employment blacklisting and specifies that protection applies to both an individual who voluntarily separates from employment and to an individual who is discharged from employment. Specifies what damages may be awarded in a civil action by a former employee against an employer who has prevented the employee from obtaining employment with another employer, or who has knowingly authorized, allowed or permitted an agent to blacklist the former employee. Provides that an employer may not require that an employee or a prospective employee who earns or will earn less than 250% of the federal minimum hourly wage sign a covenant not to compete against the employer for any period of time after the termination of employment with the employer. Provides that an employer may not enforce any covenant not to compete against the employee, by the employer and a former employee separated from employment under any circumstances, if at the time of the separation the former employee earned less than 250% of the hourly federal minimum hourly wage. Provides that an employee, a prospective employee, or a former employee may bring a civil action against an employer that attempts to enforce a covenant not to compete.

Effective: July 1, 2001.

Kuzman, Ruppel

January 11, 2001, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

February 8, 2001, amended, reported — Do Pass.

February 14, 2001, read second time, amended, ordered engrossed.

HB 1477—LS 7756/DI 96+



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1477

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-5-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]:

4 **Chapter 3.5. Blacklisting and Other Prohibited Acts by**
5 **Employers**

6 **Sec. 1. (a) An employer that prevents a former employee who**
7 **was discharged from service or voluntarily separated from**
8 **employment with the employer from obtaining employment with**
9 **any other employer commits a Class C infraction. The former**
10 **employee may also bring a civil action against the former employer**
11 **and, if the court finds for the employee, the following may be**
12 **awarded in the civil action:**

- 13 (1) Actual and punitive damages.
14 (2) Reasonable attorney's fees.
15 (3) Court costs.
16 (4) A permanent or temporary injunction or temporary
17 restraining order.

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(b) An employer that discloses information about a current or former employee is immune from civil liability for the disclosure and the consequences proximately caused by the disclosure, unless it is proven by a preponderance of the evidence that the information disclosed was known to be false at the time the disclosure was made.

(c) This section does not prohibit a former employer from providing, in writing, to any other employer to whom the former employee has applied for employment a truthful statement of the:

- (1) date of hire;
- (2) date of termination;
- (3) compensation paid; and
- (4) reason for the former employee's separation from employment.

(d) Upon written request by the prospective employee, the prospective employer shall provide copies of any written communications from current or former employers that may affect the employee's possibility of employment with the prospective employer. The request must be received by the prospective employer not later than thirty (30) days after the application for employment is made to the prospective employer.

Sec. 2. (a) As used in this section, "blacklist" means to make a list of persons who are disapproved of and to disseminate the list to the public.

(b) If any railway company or any other company, partnership, limited liability company, or corporation employer in Indiana knowingly authorizes, allows, or permits any of its agents to:

- (1) blacklist any discharged employee, or any employee who may have voluntarily left the employer's service; or
- (2) attempt by words or writing, or any other means;

to prevent the former employee from obtaining employment with any other employer, the employer is liable to the former employee in an amount that compensates the former employee, to which may be added exemplary damages.

Sec. 3. (a) An employee of a private employer that is under public contract may report in writing the existence of:

- (1) a violation of a federal law or regulation;
- (2) a violation of a state law or rule;
- (3) a violation of an ordinance of a political subdivision (as defined in IC 36-1-2-13); or
- (4) the misuse of public resources;

concerning the execution of the public contract first to the private

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1 employer, unless the private employer is the person whom the
 2 employee believes is committing the violation or misuse of public
 3 resources. In that case, the employee may report the violation or
 4 misuse of public resources in writing to either the private employer
 5 or to any official or agency entitled to receive a report from the
 6 state ethics commission under IC 4-2-6-4(b)(2)(G) or
 7 IC 4-2-6-4(b)(2)(H). If a good faith effort is not made to correct the
 8 problem within a reasonable time, the employee may submit a
 9 written report of the incident to any person, agency, or
 10 organization.

11 (b) For making a report under subsection (a), an employee may
 12 not:

- 13 (1) be dismissed from employment;
- 14 (2) have salary increases or employment related benefits
- 15 withheld;
- 16 (3) be transferred or reassigned;
- 17 (4) be denied a promotion that the employee otherwise would
- 18 have received; or
- 19 (5) be demoted.

20 (c) Notwithstanding subsections (a) and (b), an employee must
 21 make a reasonable attempt to ascertain the correctness of any
 22 information to be furnished and may be subject to disciplinary
 23 actions (including suspension or dismissal, as determined by the
 24 employer) for knowingly furnishing false information. However,
 25 any employee disciplined under this subsection is entitled to file an
 26 appeal of the disciplinary action as a civil action. If the court finds
 27 for the employee, the following may be awarded in the civil action:

- 28 (1) Actual and punitive damages.
- 29 (2) Reasonable attorney's fees.
- 30 (3) Court costs.
- 31 (4) A permanent or temporary injunction or temporary
- 32 restraining order.

33 (d) An employer who violates this section commits a Class A
 34 infraction.

35 SECTION 2. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS
 36 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2001]:

38 **Chapter 6. Restrictions on Covenants Not to Compete**

39 **Sec. 1.** It is hereby declared by the general assembly that a
 40 requirement that an employee or prospective employee agree to the
 41 terms of a covenant not to compete as a condition of employment
 42 is not favored and is contrary to public policy.



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1 **Sec. 2. An employer may not require that an employee or a**
 2 **prospective employee who earns or will earn less than two hundred**
 3 **fifty percent (250%) of the federal minimum hourly wage**
 4 **prescribed by 29 U.S.C. 206(a)(1) sign a covenant not to compete**
 5 **against the employer for any period after termination of**
 6 **employment with the employer.**

7 **Sec. 3. An employer may not enforce any covenant not to**
 8 **compete against the employer signed by the employer and a former**
 9 **employee separated from employment under any circumstances,**
 10 **if at the time of the separation the former employee earned less**
 11 **than two hundred fifty percent (250%) of the hourly federal**
 12 **minimum hourly wage prescribed by 29 U.S.C. 206(a)(1). Any such**
 13 **contract is void and contrary to public policy.**

14 **Sec. 4. (a) An employee, a prospective employee, or a former**
 15 **employee may bring a civil action against an employer to enforce**
 16 **section 2 or 3 of this chapter.**

17 **(b) If an employer has violated section 2 or 3 of this chapter, the**
 18 **court may do the following:**

19 **(1) Award:**

20 **(A) actual damages;**

21 **(B) exemplary damages; and**

22 **(C) court costs and reasonable attorney's fees;**

23 **to the prevailing employee or prospective employee.**

24 **(2) Enjoin further violation of this chapter.**

25 **SECTION 3. IC 34-30-2-87.5 IS ADDED TO THE INDIANA**
 26 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 27 **[EFFECTIVE JULY 1, 2001]: Sec. 87.5. IC 22-5-3.5-1 (Concerning**
 28 **employer disclosure of information about a discharged employee).**

29 **SECTION 4. IC 22-5-3 IS REPEALED [EFFECTIVE JULY 1,**
 30 **2001].**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred House Bill 1477, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, after line 17, begin a new paragraph and insert:

"(b) An employer that discloses information about a current or former employee is immune from civil liability for the disclosure and the consequences proximately caused by the disclosure, unless it is proven by a preponderance of the evidence that the information disclosed was known to be false at the time the disclosure was made."

Page 2, line 1, delete "(b)" and insert "(c)".

Page 2, line 9, delete "(c)" and insert "(d)".

Page 2, line 13, after "." insert **"The request must be received by the prospective employer not later than thirty (30) days after the application for employment is made to the prospective employer."**

Page 2, line 23, delete "employer" and insert **"employee"**.

Page 4, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 3. IC 34-30-2-87.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 87.5. IC 22-5-3.5-1 (Concerning employer disclosure of information about a discharged employee)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1477 as introduced.)

KUZMAN, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1477 be amended to read as follows:

Page 2, line 26, after "Indiana " insert "**knowingly**".

(Reference is to HB 1477 as printed February 9, 2001.)

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